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The Honorable Whitman L. Holt
Chapter 9

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON
YAKIMA DIVISION

In re:

CITY OF CLE ELUM,
Debtor.

Case No. 25-01128-WLH9

Adv. Pro. No. _____

CITY OF CLE ELUM,
Plaintiff,
v.

COMPLAINT TO AVOID AND
RECOVER TRANSFERS PURSUANT
TO 11 U.S.C. §§ 547 AND 550 AND
TO DISALLOW CLAIMS PURSUANT
TO 11 U.S.C. § 502

CITY HEIGHTS HOLDINGS, LLC,
a Washington limited liability
company; UMPQUA BANK, an
Oregon state chartered bank; and
U.S. BANK N.A., a national banking
association,
Defendants.

The City of Cle Elum (the “Plaintiff” or the “City”), by and through its undersigned counsel, files this complaint (the “Complaint”) (a) against City Heights Holdings, LLC (“CHH” or the “Transferee”) to avoid and recover transfers received
COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547 AND 550 AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502 - 1

1 by CHH and to disallow any claims held by CHH, and (b) against Umpqua Bank
2 and U.S. Bank N.A. (collectively, the “Respondents”). In support of this Complaint,
3 Plaintiff alleges that:

4 NATURE OF THE CASE

5 1. The City seeks to avoid and recover from CHH, or from any other
6 person or entity for whose benefit the transfers were made, all preferential transfers
7 that occurred during the ninety (90) day period prior to the commencement of the
8 City’s bankruptcy proceedings (the “Case”) pursuant to Sections 547 and 550 of
9 Chapter 5 of Title 11 of the United States Code (the “Bankruptcy Code”), which
10 are made applicable to this Case by Section 901(a) of the Bankruptcy Code.

11 2. The transfers (a) comprise several writs of garnishment under
12 Washington law which CHH caused to issue and attach to the City’s bank accounts
13 in the weeks leading up to the commencement of this Case, and (b) satisfy the
14 definition of a transfer set forth in Section 101(54)(A) of the Bankruptcy Code.
15 Furthermore, the liens created by these garnishments are restricting the City’s
16 access to its working capital at a time when its wherewithal is already strained, and
17 they are further impeding the City’s unqualified right to continued use of its
18 property pursuant to Section 904 of the Bankruptcy Code.

19 3. In addition, the City seeks to disallow, pursuant to Section 502(d) of
20 the Bankruptcy Code (made applicable to this Case by Section 901(a) of the
21 Bankruptcy Code), any claim that CHH has filed (or may hereafter file) against the
22 City, or claim that may otherwise be deemed scheduled for CHH. Plaintiff does
23 not waive but hereby reserves all of its rights to object to any such claim for any
24 reason, including, but not limited to, any reason set forth in sections 502(a) through
25 (j) of the Bankruptcy Code.

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COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547
AND 550 AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502 - 2

1 4. Neither CHH nor the Respondents will release the garnishments or the
2 City's funds without an order from the court, making expeditious relief in this case
3 essential to a successful effort to adjust the City's debts. For the avoidance of
4 doubt, the City is not seeking monetary relief against the Respondents at this time
5 and instead seeks an order or judgment compelling their cooperation with a release
6 of the Pre-Petition Writs (hereinafter defined) that CHH caused to be issued during
7 the Preference Period (hereinafter defined).

8 **JURISDICTION AND VENUE**

9 5. The United States Bankruptcy Court for the Eastern District of
10 Washington has jurisdiction over this adversary proceeding pursuant to 28 U.S.C.
11 §§ 157 and 1334(b).

12 6. This adversary proceeding is a "core" proceeding to be heard and
13 determined by the court pursuant to 28 U.S.C. § 157(b)(2). To the extent
14 necessary, Plaintiff consents to entry of final orders and judgment in this matter by
15 this court.

16 7. Venue of the Case and this adversary proceeding is proper in this
17 district pursuant to 28 U.S.C. §§ 1408 and 1409.

18 8. The statutory and legal predicates for the relief sought herein are
19 Sections 105, 502, 547, and 550 of the Bankruptcy Code and Rules 3007 and 7001
20 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

21 9. This Complaint is timely filed under Section 546 of the Bankruptcy
22 Code.

23 **PARTIES**

24 10. Plaintiff is a city in the state of Washington and is the Debtor in the
25 Case.

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COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547
AND 550 AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502 - 3

1 18. Prior to the Petition Date, the City, as a municipality existing under
2 Washington law, maintained relationships with various entities and individuals
3 through which the City purchased, sold, received, or delivered goods and services,
4 including CHH.

5 19. More specifically, CHH is and at all relevant times has been, a
6 counterparty to the City Heights Annexation and Development Agreement (the
7 “Development Agreement”).

8 20. In general terms, the Development Agreement obligates CHH to
9 construct a master planned community over a multi-phase, 25-year buildout
10 comprised of 962 homesites on a 358-acre property in the City, which would be
11 named City Heights (the “City Heights Project”).

12 21. CHH became the operative owner and developer of City Heights by
13 virtue of various transactions, and CHH assured the City that it wished to perform
14 under the Development Agreement and to cause an orderly completion of the City
15 Heights Project in accordance therewith.

16 22. Neither CHH nor the Ridge Entities have substantially completed the
17 obligations owed to the City and its inhabitants under the Development
18 Agreement. A summary of the disordered state of the City Heights Project is set
19 forth in the First-Day Declaration.

20 23. The financial outlays made and other expenses incurred by the City in
21 connection with its continued performance under the Development Agreement
22 have put the City’s financial affairs under significant pressure, and with precious
23 little received in return.

24 24. The City’s financial difficulties that led to the decision to file the
25 Petition are attributable to a combination of factors, all of which placed significant
26 stress on the City’s liquidity position in the months leading up to the Petition Date.

COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547
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1 A summary of the City’s prepetition operations, debt structure, and factors that led
2 to the filing of this Case are set forth in the First-Day Declaration.

3 25. In particular, CHH’s vexatious litigation strategies against the City led
4 to an extreme and punitive arbitration award against the City and in favor of CHH.
5 That arbitration award was subsequently confirmed by the King County Superior
6 Court pursuant to that court’s amended judgment entered May 12, 2025 (the
7 “Amended Judgment”). A true and correct copy of the Amended Judgment is
8 attached hereto as **Exhibit A**.

9 26. The Amended Judgment (inclusive of fees, costs and prejudgment
10 interest) totals \$25,997,198.40 (the “Judgment Debt”), which is approximately
11 \$11,477.79 per citizen of the City.

12 27. The Amended Judgment is presently accruing interest at the rate of
13 12% per annum, which is approximately \$259,971.98 per month. To put this
14 interest accrual in perspective, the Amended Judgment is accruing annual interest
15 of approximately \$3,119,663.76 against a City whose general fund totaled
16 \$4,452,132.00 for the most-recent fiscal year. A true and correct copy of the
17 City’s budget for fiscal year 2025 is attached hereto as **Exhibit B**.

18 28. Because the City cannot reasonably repay the Amended Judgment
19 while carrying on reasonable levels of essential services to its citizens, any plan
20 which may be propounded by the City and confirmed by the court will necessarily
21 afford CHH less than full recovery on its judgment debt.

22 29. Based upon Plaintiff’s review of the information, if any, provided by
23 CHH prior to filing this Complaint, and after performing Plaintiff’s own due
24 diligence evaluation of the reasonably knowable affirmative defenses to avoidance
25 of the transfers, Plaintiff has determined that Plaintiff may avoid the transfers even
26 after taking into account any reasonably foreseeable alleged affirmative defenses.

COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547
AND 550 AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502 - 6

1 30. During the course of this litigation, Plaintiff may learn (through
2 discovery or otherwise) of additional transfers made to CHH during the Preference
3 Period or that may be avoidable under other provisions of the Bankruptcy Code.
4 For the avoidance of doubt and for the benefit of all creditors of the City, it is the
5 City's intention to avoid and recover all avoidable transfers of property made to or
6 for the benefit of CHH or any other transferee affiliated with CHH in accordance
7 with applicable provisions of the Bankruptcy Code. Plaintiff, therefore, reserves
8 its right to amend this Complaint to include: (i) further information regarding the
9 transfers, (ii) additional transfers, (iii) modifications of or revision to the identity of
10 the applicable transferee, (iv) additional defendants, or (v) additional causes of
11 action as further information becomes known to the City, through formal discovery
12 or otherwise, and for such amendments to relate back to the date of this Complaint.

13 **CLAIMS FOR RELIEF**

14 **First Claim for Relief**

15 *(Avoidance of Preference Period Transfers – 11 U.S.C. § 547)*

16 31. Plaintiff incorporates all preceding paragraphs as if fully re-alleged
17 herein, to the extent they are not inconsistent with allegations contained in this
18 First Claim for Relief.

19 32. During the ninety (90) days before and including the Petition Date,
20 that is between March 26, 2025, and June 24, 2025 (the "Preference Period"), the
21 City continued to operate its financial affairs, including the transfer of money,
22 either by checks, cashier checks, wire transfers, ACH transfers, direct deposits, or
23 other transfers to various entities.

24 33. CHH received avoidable transfers during the Preference Period.

25 34. Section 547(b) of the Bankruptcy Code provides as follows:
26

COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547
AND 550 AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502 - 7

1 Except as provided in subsections (c) and (i) of this section,
2 the trustee may, based on reasonable due diligence in the
3 circumstances of the case and taking into account a party's
4 known or reasonably knowable affirmative defenses under
5 subsection (c), avoid any transfer of an interest of the debtor in
6 property—

7 (1) to or for the benefit of a creditor;

8 (2) for or on account of an antecedent debt owed by the debtor
9 before such transfer was made;

10 (3) made while the debtor was insolvent;

11 (4) made—

12 (A) on or within 90 days before the date of the filing of the
13 petition; or

14 (B) between ninety days and one year before the date of
15 the filing of the petition, if such creditor at the time of
16 such transfer was an insider; and

17 (5) that enables such creditor to receive more than such
18 creditor would receive if—

19 (A) the case were a case under chapter 7 of this title;

20 (B) the transfer had not been made; and

21 (C) such creditor received payment of such debt to the
22 extent provided by the provisions of this title.

23 35. In an effort to enforce the Amended Judgment, CHH caused the King
24 County Superior Court to issue Writs of Garnishment (for lesser amount) to each
25 of the Respondents (the “Pre-Petition Writs”) on May 28, 2025 (the “Execution
26 Date”), which was approximately four weeks before the Petition Date. True and
correct copies of the Pre-Petition Writs are attached hereto as **Exhibit C**.

36. The Pre-Petition Writs constitute transfers within the meaning of
Sections 101(54)(A) and 547(b) of the Bankruptcy Code because the Pre-Petition
Writs have created liens¹ against the City’s financial accounts maintained with
each of the Respondents.

¹ Garnishments constitute judicial liens under the Bankruptcy Code. *In re Bensen*, 262 B.R. 371, 379 (Bankr. N.D. Tex. 2001) (“It is well established that a writ of garnishment constitutes a judicial lien for purposes of the lien

1 37. The liens effectuated by the Pre-Petition Writs were created for the
2 benefit of CHH within the meaning of Section 547(b)(1) of the Bankruptcy Code
3 and with the specific intent to enhance CHH's position relative to other creditors
4 by encumbering assets of the City as security for the Judgment Debt.

5 38. The Amended Judgment and the Judgment Debt are unquestionably
6 antecedent debts owed by the City to CHH within the meaning of
7 Section 547(b)(2), each having been adjudicated before the Petition Date and prior
8 to the issuance of the Pre-Petition Writs on the Execution Date.

9 39. CHH was a creditor at the time of each transfer by virtue of the
10 Judgment Debt due and owing to CHH by the City at that time because the
11 Judgment Debt (a) was entered prior to the Execution Date, and (b) constitutes a
12 "debt" of the City or "claim" against the City (as those terms are defined in the
13 Bankruptcy Code).

14 40. The City was insolvent within the meaning of Sections 101(32)(c)(ii)
15 and 547(b)(3) of the Bankruptcy Code on the Execution Date because the City
16 was, among other things, unable to pay the multimillion-dollar Judgment Debt then
17 due and owing to CHH by the City.

18 41. Plaintiff is entitled to the presumption of insolvency for each transfer
19 made during the Preference Period pursuant to Section 547(f) of the Bankruptcy
20 Code and, accordingly, puts CHH to its burden of proof to rebut this presumption.

21 42. The transfers effectuated by the Pre-Petition Writs were made on the
22 Execution Date, which falls within the Preference Period and thereby satisfies
23 Section 547(b)(4)(A) of the Bankruptcy Code.

24
25 avoidance provisions of § 522(f)."); *In re Weatherspoon*, 101 B.R. 533, 535 (Bankr. N.D. Ill. 1989) (rejecting the
26 argument that the fact that the applicable garnishment was authorized by statute made the garnishment a non-judicial
lien and concluding that garnishments "are judicial liens because they arise by virtue of the judicial proceedings and
the service of process on the [garnishee].").

COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547
AND 550 AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502 - 9

1 43. It is the law of this Circuit that any receipt of value during the
2 preference period from a debtor satisfies Section 547(b)(5) of the Bankruptcy Code
3 unless the debtor is solvent.²

4 44. As a result of the Pre-Petition Writs, CHH has encumbered assets
5 belonging to the City totaling not less than \$464,000.00, consisting of \$232,000.00
6 in an Umpqua Bank account and \$232,000.00 in a U.S. Bank account (collectively,
7 the “Garnished Funds”). True and correct copies of the Answer to Writ of
8 Garnishment from each of the Respondents are attached hereto as **Exhibit D**.

9 45. If the Pre-Petition Writs are not avoided, then CHH would be entitled
10 to assert a secured claim against the City in an amount not less than \$464,000.00 in
11 the event of a hypothetical liquidation, thereby improving its position by the delta
12 between (a) its full recovery of \$464,000.00 and (b) the pro rata share CHH
13 otherwise would have received from the distribution of that \$464,000.00 as a fully
14 unsecured judgment creditor of the City.

15 46. Because the City is insolvent (and, therefore, unable to fully repay its
16 creditors), the improved recovery afforded CHH by the Pre-Petition Writs renders
17 the liens effectuated by those Pre-Petition Writs avoidable within the meaning of
18 the Ninth Circuit’s *Shurtleff* decision (*note 2 supra*).

19 47. Application of the *Shurtleff* decision to the specific facts of this Case
20 is also appropriate because only insolvent municipalities may be debtors under
21 Chapter 9 of the Bankruptcy Code pursuant to Section 109(c)(3).

22 48. Chapter 9 of the Bankruptcy Code, focused on the continuation of the
23 operations and provision of essential services by municipalities, does not permit
24 municipalities to be dismantled or liquidated as in bankruptcy proceedings
25 conducted under other Chapters.

26 ² *In re Lewis W. Shurtleff, Inc.* (“Shurtleff”), 778 F.2d 1416, 1421 (9th Cir. 1985).

1 49. In light of these limitations, bankruptcy courts applying the “best
2 interests” test imposed by Section 943(b)(7) of the Bankruptcy Code have
3 coalesced around an alternative conduction of hypothetical liquidations in the
4 context of confirmation of Chapter 9 plans of adjustment in which outcomes for
5 creditors as a whole in exercising their state law remedies in the event of dismissal
6 are compared to those creditors’ outcome in the Chapter 9 proceeding if the
7 municipality directs “reasonable efforts” at repayment of its creditors.³

8 50. Under the specific facts of this Case, it is clear that dismissal would
9 advantage no creditor but CHH, who would continue its aggressive litigation
10 strategy by either garnishing more and more funds from the City (auguring and
11 likely precipitating its collapse) or continuing to parasitically siphon off the City’s
12 funds to the detriment of its citizens relying on its essential services.

13 51. In the latter eventuality, it is notable that CHH’s overwhelming
14 Judgment Debt would continue compounding at the rate of 12% per annum,
15 thereby ensnaring the City in a perpetual cycle of worsening insolvency while
16 CHH, having won the proverbial race to the courthouse and executed on its
17 judgment, will always remain a step ahead of other creditors.

18 52. Because the liquidation-related rules of Chapter 9 impose a
19 reasonable-efforts test and because the City cannot fully repay CHH under that
20 construction of the Bankruptcy Code, it is clear that the Pre-Petition Writs have
21 impermissibly improved CHH’s position within the meaning of Section 547(b)(5)

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23
24 ³ *In re City of Stockton, California*, 542 B.R. 261, 286 (B.A.P. 9th Cir. 2015); *In re Pierce Cnty. Hous. Auth.*,
25 414 B.R. 702, 718 (Bankr. W.D. Wash. 2009) (“The best interest of creditors requirement of § 943(b)(7) is generally
26 regarded as requiring that a proposed plan provide a better alternative for creditors than what they already have.”)
(quotations omitted); *In re Mount Carbon Metro. Dist.*, 242 B.R. 18, 34 (Bankr. D. Colo. 1999) (“Since insolvency
is the foundation of Chapter 9 eligibility, it would make little sense to confirm a reorganization plan which does not
remedy the problem.”).

1 of the Bankruptcy Code whether that issue is viewed in the classic sense (i.e.,
2 under *Shurtleff*) or under the unique prism of Chapter 9 liquidation analyses.

3 53. In accordance with the foregoing, each Pre-Petition Writ is avoidable
4 pursuant to Section 547(b) of the Bankruptcy Code.

5 **Second Claim for Relief**
6 ***(Recovery of Avoided Transfers – 11 U.S.C. § 550)***

7 54. Plaintiff incorporates all preceding paragraphs as if fully re-alleged
8 herein, to the extent they are not inconsistent with the allegations contained in this
9 Second Claim for Relief.

10 55. Plaintiff is entitled to avoid the Pre-Petition Writs pursuant to
11 Section 547(b) of the Bankruptcy Code.

12 56. CHH was the initial transferee of the Pre-Petition Writs or the
13 immediate or mediate transferee of such initial transferee or the person for whose
14 benefit the transfers effectuated by the Pre-Petition Writs were made.

15 57. Accordingly, pursuant to Section 550(a) of the Bankruptcy Code, the
16 City is entitled to a release of the Pre-Petition Writs.

17 **Third Claim for Relief**
18 ***(Disallowance of all Claims – 11 U.S.C. § 502(d) and (j))***

19 58. Plaintiff incorporates all preceding paragraphs as if fully re-alleged
20 herein, to the extent they are not inconsistent with allegations contained in this
21 Third Claim for Relief.

22 59. CHH is a transferee of transfers avoidable under Section 547(b) of the
23 Bankruptcy Code, which are also subject to the City's strong-arm powers arising
24 under Section 550 of the Bankruptcy Code.

25 60. As of the date of this Complaint, CHH has not released the Pre-
26 Petition Writs.

COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547
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61. Pursuant to Section 502(d) of the Bankruptcy Code, any and all claims of CHH (including any successors or assignees or CHH) against the City must be disallowed (or, to the extent necessary, reconsidered pursuant to Section 502(j) of the Bankruptcy Code) until such time as CHH releases the Pre-Petition Writs.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant the following relief against CHH and the Respondents:

A. On Plaintiff's First and Second Claims for Relief, (a) judgment in favor of the City and against CHH, avoiding, pursuant to sections 547(b) and 550(a) of the Bankruptcy Code, all of the transfers and directing CHH to release its writs of garnishment, and (b) judgment in favor of the City and against the Respondents directing the Respondents to cooperate in the release of the Pre-Petition Writs and to release the Garnished Funds and unfreeze any accounts of the City upon which the Respondents placed restrictions of any sort whatsoever in their good-faith response to the Pre-Petition Writs;

B. On Plaintiff's Third Claim for Relief, judgment in favor of the City and against CHH, disallowing, pursuant to Section 502(d) of the Bankruptcy Code, any claims held or filed by CHH (or any successor or assignee of CHH) against the City unless and until CHH releases its writs of garnishment and Plaintiff has full use of the Garnished Funds; and

C. Such other and further relief as this Court may deem just and proper.

1 DATED: August 13, 2025.

2 STOEL RIVES LLP

3 /s/ John S. Kaplan

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COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547
AND 550 AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502 - 14